

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Balm Post Office
Balm, Florida

Docket No. A2012-124

ORDER REMANDING DETERMINATION

(Issued May 3, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On January 26, 2012, George and Marilyn Fears (Petitioners) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Balm, Florida post office (Balm post office).² For the reasons set forth below, the Final Determination to close the Balm post office is remanded for further consideration.

II. PROCEDURAL HISTORY

On January 27, 2012, the Commission established Docket No. A2012-124 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On February 10, 2012, the Postal Service filed the Administrative Record with the Commission.⁴ On March 1, 2012, Petitioners filed a participant statement supporting their Petition.⁵ The Postal Service filed comments on March 21, 2012, requesting that the Commission affirm its Final Determination.⁶ The Postal Service also filed an

² Petition for Review received from George and Marilyn Fears regarding the Balm, Florida Post Office 33503, January 26, 2012 (Petition).

³ Order No. 1180, Notice and Order Accepting Appeal and Establishing Procedural Schedule, January 27, 2012.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, February 10, 2012 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Balm, FL Post Office and Continue to Provide Service By Near By Post Office (Final Determination).

⁵ Participant Statement received from George and Marilyn Fears, March 1, 2012 (Participant Statement).

⁶ United States Postal Service Comments Regarding Appeal, March 21, 2012 (Postal Service Comments).

addendum to the Administrative Record that same day.⁷ On April 6, 2012, the Public Representative filed its comments.⁸

III. BACKGROUND

The Balm post office provides retail postal services and service to 261 post office box customers. Administrative Record, Item No. 33 at 2. No delivery customers are served through this office. The Balm post office, an EAS-13 level facility, provides retail service from 8:00 a.m. to 12:30 p.m., and 1:00 p.m. to 3:00 p.m., Monday through Friday, and is closed on Saturday. Lobby access hours are 24 hours, Monday through Saturday. *Id.*

The postmaster position became vacant on June 5, 2010, when the Balm postmaster was promoted. *Id.* A non-career officer-in-charge (OIC) was installed to operate the office. Postal Service Comments at 2. Retail transactions average 36 transactions daily (43 minutes of retail workload). Final Determination at 2. Office receipts for the last 3 years were \$59,177 in FY 2008; \$56,819 in FY 2009; and \$53,012 in FY2010. *Id.* There are two permit or postage meter customers. *Id.* The Postal Service estimates that by closing this office, it will save \$84,241 annually.⁹

After the closure, retail services will be provided by the Wimauma post office located approximately 6 miles away.¹⁰ Delivery service will be provided through the Wimauma post office. *Id.* The Wimauma post office is an EAS-18 level office, with retail hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, and closed on Saturday.

⁷ United States Postal Service Notice of Supplemental Filing, March 21, 2012 (Addendum). The Addendum indicates that "an additional cost of approximately \$3500.00 is estimated for the discontinuance." The Administrative Record estimates the cost of replacement service to be \$0. Administrative Record, Item No. 17.

⁸ Public Representative Comments, April 6, 2012 (PR Comments). On April 6, 2012, the Public Representative filed a Motion of Public Representative for Late Acceptance of Comments. That motion is granted.

⁹ *Id.* at 10. In the Addendum, the Postal Service revises this estimate to be \$78,841. Addendum at 170.

¹⁰ Final Determination at 2. Google Maps estimates the driving distance between the Balm and Wimauma post offices to be approximately 5.6 miles (11 minutes driving time).

Id. Six-hundred-twenty-nine (629) post office boxes are available. *Id.* Customers who choose to rent a post office box at the Wimauma post office will be permitted to retain their Balm post office box number and ZIP Code. *Id.* at 6, Concern No. 30. However, customers who elect to receive curbside delivery will use a Wimauma address and ZIP Code. *Id.* at 5, Concern No. 15.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Balm post office. They contend that the Balm post office should not be closed because (1) the Balm post office is a historical landmark; (2) the Postal Service inaccurately calculated economic savings; (3) customers will incur costs and inconvenience from the need to travel to another post office for postal services; and (4) anticipated community growth will increase demand for services at the Balm post office. Petition at 1. Petitioners recommend that the full-time postmaster position be replaced with a part-time postal clerk position. Participant Statement at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Balm post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Balm community; and (3) the economic savings expected to result from discontinuing the Balm post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Balm post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Balm post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community; and

- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Balm community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, effect on the Balm community, economic savings, and effect on postal employees. *Id.* at 12-13.

Public Representative. The Public Representative believes that the Final Determination should be remanded for further consideration. PR Comments at 1. The Public Representative contends that because delivery customers will be required to use Wimauma addresses, the closing of the Balm post office will have a significantly greater impact on the Balm community than the Postal Service recognizes in the Final Determination. *Id.* at 4. In addition, the Public Representative contends that Postal Service inaccurately calculated economic savings because it failed to account for rural delivery costs and lost post office box revenues, and miscalculated the savings it would achieve from eliminating the postmaster salary and benefits. *Id.* at 5-7.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence on the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the

Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

This proceeding presents an unusual situation requiring a remand of the Final Determination to the Postal Service for failure to provide adequate notice to customers of its intent to close rather than consolidate the Balm post office.

This case represents the second appeal of a Postal Service Final Determination affecting the Balm post office. The first, in Docket No. A2012-4, involved a Final Determination to consolidate the Balm post office. The Final Determination to consolidate was posted from August 29, 2011 through September 30, 2011 at the Balm and Wimauma post offices. The appeal was filed October 5, 2011.¹¹ On November 29, 2011, the Postal Service filed notice with the Commission withdrawing the Final Determination to consolidate the Balm post office.¹² In light of the Postal Service's filing, the Commission dismissed Petitioners' appeal without prejudice.¹³

The instant (and second) appeal followed the Postal Service's posting of the Final Determination to close the Balm post office at the Balm and Wimauma post offices

¹¹ Docket No. A2012-4, Petition for Review Received from George & Marilyn Fears Regarding the Balm, FL Post Office, October 5, 2011.

¹² Docket No. A2012-4, United States Postal Service Notice Withdrawing Final Determination, November 29, 2011.

¹³ Docket No. A2012-4, Order No. 1049, Order Dismissing Appeal, December 16, 2011.

from December 5, 2011 through January 6, 2012. Final Determination at 1; Addendum at 2.

The Administrative Records in the two dockets are for all intents and purposes identical. While it may have been the Postal Service's intent to propose to close the Balm post office, the notice it posted was a "Proposal to Consolidate the Balm, FL Post Office and Continue to Provide [an] Independent Post Office." Administrative Record, Item No. 33. At the outset, that proposal stated: "The Postal Service is proposing to consolidate the Balm, FL Post Office and provide delivery and retail services by a[n] independent post office under the administrative responsibility of the Wimauma Post Office, located 5 miles away." *Id.* at 2. It further stated that "[i]f this proposal [to consolidate] is implemented, delivery services will be provided by the Wimauma Post Office, an EAS-18 level office. *Retail and PO Box service will still be available at the Balm Post Office.*" (Emphasis added.) *Id.*; see also *id.*, Item No. 41, Proposal to Consolidate the Balm, FL Post Office and Continue to Provide [an] Independent Post Office (Revised), which is, except for the title, identical to the proposal in Item No. 33.

The Administrative Record in Docket No. A2012-124 includes a round-date stamped "Proposal to Close the Balm, FL Post Office and Continue to Provide Service by Independent Post Office." *Id.*, Item No. 36 (.pdf page 241). This page contains the following notation: "1st version Final Determination was revised[.] New version added to docket". *Id.* Docket No. A2012-4 contained a similar page, excluding the notation. See Docket No. A2012-4, Administrative Record, Item No. 36 at 1.

Neither docket, however, includes the text of the proposal to close the Balm post office. Only the cover sheet is included in the record. Any customer reading the proposal as posted would have concluded that the Postal Service proposed to consolidate the Balm post office with the Wimauma post office and convert the Balm post office into a "classified branch." The proposal describes a "classified branch" as a facility that provides "the same services as an independent post office, except for postage meter setting and acceptance of permit mail." Administrative Record, Item No. 33 at 2. This is a wholly different outcome than under a proposal to close. As a

result, customers may have reasonably concluded that the consolidation would have little impact on the postal services that would be provided after consolidation. A customer who believed that the Balm post office was to be consolidated would not have learned that it was to be closed until the Final Determination was posted on December 5, 2011, and would have been deprived of an opportunity to comment on the closure.

Based on the record, the Commission cannot conclude that adequate notice was given of the Postal Service's proposal to close the Balm post office. Only the second Final Determination, posted December 5, 2011, informs the community of the Postal Service's plan to close the facility, and at that point, it is presented as a *fait accompli*.

In sum, the Final Determination posted December 5, 2011 was based on a record compiled assuming the facility would still be operating, albeit as a branch office, not that it would be closed. Customers were not afforded an adequate opportunity to comment on the proposed closure, presented as a *fait accompli* in the Final Determination.

On the facts presented here, the Commission cannot conclude that the Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d). Accordingly, the determination to close the Balm post office is remanded to the Postal Service for further consideration.

It is ordered:

The Postal Service's determination to close the Balm, Florida post office is remanded.

By the Commission.

Shoshana M. Grove
Secretary

Commissioner Hammond not participating.